In the Supreme Court

OF THE

United States

OCTOBER TERM, 1965

No. 92

ROLAND CAMARA,
Appellant,

vs.

MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,
Appellee,

STATE OF CALIFORNIA,
Real Party in Interest.

On Appeal from the Judgment of the District Court of Appeal, State of California, First Appellate District

MOTION TO DISMISS OR AFFIRM

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Appellee and Real Party in Interest, pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, hereby move this Court to dismiss this appeal or to affirm the judgment of the District Court of Appeal of the State of California, First

Appellate District, Division Two, on the grounds that the constitutional issue is uncertain and that the question presented is so unsubstantial as not to need further argument.

OPINION BELOW

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two, is reported in 237 A.C.A. 136, 46 Cal. Rptr. 585 (1965), and is reproduced in Appendix A of Appellant's Jurisdictional Statement.[1] Appellant's petition for a hearing by the Supreme Court of the State of California was denied November 16, 1965.

QUESTION PRESENTED

Whether the Fourth and Fourteenth Amendments make unconstitutional the sections of the San Francisco Municipal Housing Code providing that authorized employees under certain conditions may enter any premises to carry out the health and safety inspections authorized by the Municipal Code, and that failure to permit such entry is a misdemeanor.

STATEMENT OF THE CASE

The facts in this case are fully stated in the opinion of the District Court of Appeal.

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[1]On page xv of Appendix A, line 4 should be corrected to read, "may not be exercised under unreasonable conditions."

"The Division of Housing Inspection of the Department of Public Health is required, under part III, section 86, of the San Francisco Municipal Code, to make an annual inspection of all San Francisco apartment houses for the purpose of licensing such apartment houses and issuing permits of occupancy.

On November 6, 1963, Inspector Nall visited the premises at 225 Jones Street for the purpose of making such an inspection, and was informed by the manager of said apartment building that the lessee of a ground floor rental unit (223 Jones), which was restricted to commercial use under an existing permit of occupancy, was using the leased premises as a residence and was living in the rear of his store. Nall then called on plaintiff, who admitted that he was living in the rear of his store, but refused to allow Nall to enter and inspect the premises. Two days later Nall returned and was again refused permission to inspect the premises. Plaintiff failed to appear on a citation issued by the district attorney, after which an inspector again went to plaintiff, informed him of the health department's duty to make an annual inspection of all San Francisco apartment houses, and further informed him that the existing permit of occupancy authorized commercial and not residential use of the ground floor unit leased by plaintiff. Plaintiff again refused to allow said premises to be inspected.

Plaintiff was subsequently arrested and charged with violating section 507 of the Housing Code of the City and County of San Francisco (hereinafter referred to as 'Housing Code')." *Camara v. Municipal Court*, 237 A.C.A. 136, 136-137 (1965).

Section 503 of the San Francisco Municipal Housing Code provides:

> "Right to enter building. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

Section 507 of this code provides:

> "Penalty for violation. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue. Any person who shall do any work in violation of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, and any person having charge of such work who shall permit it to be done, shall be liable to the penalty provided."[2]

[2]Relevant sections of the San Francisco Housing Code are set forth in Appendix A.

There is no provision in the San Francisco Housing Code permitting forced entry by the inspector, nor is there any provision under which a search warrant could be obtained.[3]

SUMMARY OF APPELLEE'S ARGUMENT

Appellee contends that because the facts have not been fully developed and there are uncertainties as to both the precise question considered and the construction of the San Francisco ordinance, jurisdiction should be declined in this case.

If the question raised is considered on the basis of this record, it is unsubstantial because the prior decisions of this Court in *Frank v. Maryland,* 359 U.S. 360 (1959) and *Ohio ex rel. Eaton v. Price,* 364 U.S. 263 (1960) are controlling. Persuasive support

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[3]Additionally there would be no grounds for the issuance of such a warrant under state law which provides:

"A search warrant may be issued upon any of the following grounds:

1. When the property was stolen or embezzled.

2. When the property or things were used as the means of committing a felony.

3. When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered.

4. When the property or things to be seized consist of any item or constitutes any evidence which tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

The property or things described in this section may be taken on the warrant from any place, or from any person in whose possession it may be."

Calif. Pen. Code § 1524.

for this conclusion is found in the three state decisions, in addition to the California decision below, which have considered similar ordinances and reached the same result.

The decision in *Frank v. Maryland,* reached after full consideration of a right to privacy not restricted to criminal matters, is entirely consistent with the Fourth and Fourteenth Amendments. The circumstances in the case at bar, similar to the other three state cases, present even stronger reasons than those in *Frank* for finding that a carefully circumscribed right to inspect, without obtaining a warrant, is reasonable and valid. The authority to inspect upheld by these cases is essential to protect those living in cities and to prevent the decay of the city itself. To impose the requirement of a prior search warrant would create both confusion and an intolerable burden on the Courts without achieving any more protection of the right to privacy than now exists.

ARGUMENT

I

THE COURT SHOULD DECLINE TO EXERCISE JURISDICTION BECAUSE THE CONSTITUTIONAL ISSUE IS UNCERTAIN AT THE PRESENT STAGE OF THE PROCEEDINGS.

Even though the effect of the California judgment in this case is to permit further proceedings in the Municipal Court, the judgment is a final judgment for the purposes of Supreme Court jurisdiction on appeal. *Rescue Army v. Municipal Court,* 331 U.S.

549, 566 (1946). However, since there has been no trial on the merits there is no complete record of the facts and the constitutional issue is not

> "in clean-cut and concrete form, unclouded by any serious problem of construction relating either to the terms of the questioned legislation or to its interpretation." *Id.* at 584.

Although the decision of the District Court of Appeal apparently considers only the constitutionality of the ordinance on its face, appellant also argues on this appeal that on the facts in this case, there was no probable cause to support a search (Jurisdictional Statement at 12).[4]

Additionally, the Court below in its opinion states:

> "It may be noted that plaintiff places considerable emphasis upon the fact that the ordinance authorizes an inspection without any showing or probable cause. However, the facts in the present case fall short of establishing that the attempted inspection of plaintiff's apartment was not based upon such a showing. Although the petition alleged that the inspection was routine in nature and was not occasioned by any complaint concerning the premises, the answer directly controverts this allegation. Plaintiff thereafter elected to stand upon the assertion that the ordinance was unconstitutional on its face. The instant case is therefore factually indistinguishable in this respect from the *Givner, Price* and *Evans* cases." *Camara v. Municipal Court,* 237 A.C.A. 136, 145 n. 3 (1965), JS Appendix A at xv.

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[4]Hereinafter cited as JS.

Thus, it would seem to be unclear whether or not the fact of the existence of probable cause was considered by the Court. If probable cause does exist, appellant has no grounds for his argument that the right to inspect was asserted without cause. If his attack is that the ordinance, which contains no explicit cause requirement, is unconstitutional on its face, the discussion of the facts relating to cause is irrelevant, but both appellant and the Court below refer to them.

Moreover, there has been no development of the fact that appellant's residence was involved, other than his self-serving "admission" and the hearsay statement of the manager. The portion of the building in question was apparently zoned for commercial occupancy. Thus, by the simple expedient of "admitting" he resided in his commercial premises, appellant, without further proof of his occupancy, seeks to block inspection of them. Facts may be produced in evidence which would show appellant does not, in fact, reside there, and has no standing to raise this issue. See, *e.g., Barrows v. Jackson,* 346 U.S. 249, 255 (1953) (dictum); *Joint Anti-Fascist Refugee Comm. v. McGrath,* 341 U.S. 123, 149-54 (1951) (concurring opinion).

In *Rescue Army,* this Court declined to exercise its jurisdiction where there were some uncertainties as to the state Court's construction of the ordinances involved, even though the appellant then had the burden of undergoing trial. The policy of "strict necessity in disposing of constitutional issues" followed

there should be applied to this case as well. Appellant can then, without prejudice, raise the issue when a fully developed record will permit a more precise determination of the questions involved. Applicable also to this case is the comment of Mr. Justice Black in *District of Columbia v. Little,* 339 U.S. 1, 3 (1950), which this Court decided on other than constitutional grounds:

> "Neither the facts of this case nor the district law on which the prosecution rests, provide a basis for a sweeping determination of the Fourth Amendment's application to all these various types of investigations, inspections and searches. Yet a decision of the constitutional requirement for a search in this particular case might have far reaching and unexpected implications as to closely related questions not now before us."

II

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THIS APPEAL.

Although the precise question sought to be presented by this appeal has not been directly decided, the decision of this Court in *Frank v. Maryland,* 359 U.S. 360 (1959) is controlling in this case. In *Frank,* this Court upheld the constitutionality of an ordinance similar in most respects, but with the requirement that the inspector have cause to expect that a nuisance exists. Shortly after the decision in *Frank,* this Court had before it a case involving an ordinance nearly identical to the San Francisco ordinance. The

state Court decision holding the ordinance valid was affirmed by an equally divided Court. *Ohio ex rel. Eaton v. Price,* 364 U.S. 263 (1960).[5] The four justices voting for affirmance were of the opinion that *Frank* was controlling. *Ohio ex rel. Eaton v. Price,* 360 U.S. 246, 248 (1959).

Prior to the California decision now before this Court, the highest Courts of three states considered similar ordinances and reached the same result.

In *Givner v. State of Maryland,* 210 Md. 484, 124 A.2d 764 (1956), the Court of Appeals of Maryland held that an ordinance almost identical with section 503 was not unconstitutional in permitting an inspection without a search warrant. The Court concluded that an inspection by a health inspector is made in the exercise of lawful police power and that the need for combatting urban blight and the growth of slum conditions, as well as the need for enforcement of minimum housing standards for safety and sanitation, overrides any invasion of privacy which may be incurred by the inspection.

In *City of St. Louis v. Evans,* 377 S.W.2d 948 (Mo. 1960), the Supreme Court of Missouri followed *Givner* in holding that building and health inspectors had a right to enter pursuant to an ordinance similar to section 503. The St. Louis ordinance, in addition, permitted the official to invoke the aid of the police department to enforce his right of entry if denied. The Court found that prohibitions against unreason-

[5]It was noted in the dissenting opinion that the judgment is without force as precedent.

able searches and seizures do not prohibit reasonable searches, and while the Fourth Amendment is primarily designed to protect the individual in the sanctity and privacy of his home, books, papers, and property, it does not apply to reasonable rules and regulations adopted in the exercise of the police power for the protection of the public health, morals and welfare, 337 S.W. 2d at 959.

The third case is that which was affirmed by the equally divided Court in *Ohio ex rel. Eaton v. Price, supra.* Considering an ordinance with terms nearly identical to those of section 503 of the San Francisco Housing Code, the Ohio Court held unanimously that defendant's conviction for refusing entry should be affirmed, on the ground that the provision for inspection in the exercise of the police power to protect the public health of the citizens of the City of Dayton was not an unreasonable search. *State v. Price,* 168 Ohio St. 123, 151 N.E. 2d 253, *aff'd, Ohio ex rel. Eaton v. Price,* 364 U.S. 263 (1960).

Appellant contends that *Frank* cannot be considered controlling because the decision below goes beyond *Frank* in curtailing the guarantees of the Fourth and Fourteenth Amendments and, if the attempt to distinguish *Frank* fails, then that decision should be overruled (JS 7). Neither contention has merit.

A. Frank v. Maryland Is Entirely Consistent With The Fourth And Fourteenth Amendments.

Appellant bases his claim of inconsistency on his assertion that the majority opinion in *Frank v. Mary-*

land restricts the protection of the Fourth and Fourteenth Amendments to criminal cases by holding that since the attempted search by the health inspector is not a criminal matter the protections of the amendments are not available (JS 8). This is not the basis for the holding of *Frank*.[6] The majority opinion reviews the historic background of the Fourth Amendment and states that

> "two protections emerge from the broad constitutional proscription of official invasion. The first of these is the right to be secure from intrusion into personal privacy, the right to shut the door on officials of the state unless their entry is under proper authority of law. The second, and intimately related protection is self-protection; the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property." 359 U.S. at 365.

The Court notes that it was on the issue of the right to be secure from searches for evidence to be used in criminal prosecutions that the great battle for fundamental liberty was fought. The opinion continues,

> "While these concerns for individual rights were the historic impulses behind the Fourth Amendment and its analogues in state constitutions, the

[6]It may well be, however, that the requirements of the Fourth Amendment, whether applied to the federal government, or to the states through the Fourteenth Amendment, are applicable only to searches which have a criminal conviction as their purpose and that a more extensive right to privacy is more appropriately protected under the general due process considerations of the Fifth and Fourteenth Amendments.

> application of the Fourth Amendment and the extent to which the essential right of privacy is protected by the Due Process Clause of the Fourteenth Amendment are of course not restricted within these historic bounds." *Id.* at 365-66.

The opinion thus recognizes a general right to be secure from official intrusion into personal privacy. The Court holds only that this right of privacy is subject to the public welfare in the circumstances before it.

The majority opinion considers the liberty which was asserted:

> "The absolute right to refuse consent for an inspection designed and pursued solely for the protection of the community's health, even when the inspection is conducted with due regard for every convenience of time and place." 359 U.S. at 366.

It also considers the safeguards of the ordinance and concludes that the inspection touched

> "at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion . . ." 359 U.S. at 367.

The Court then states the crucial factor to be considered: that the demand made on the individual by the inspector must be assessed in the light of the needs which have produced it. Balancing these needs, and the long history of the use of such inspections, the Court concludes that the Maryland statute does not violate due process. Such balancing can be the

only proper approach where such vital interests are concerned.

For support for his position, appellant calls attention to the case of *District of Columbia v. Little*, 178 F.2d 13 (D.C. Cir. 1949), affirmed on other than constitutional grounds, 339 U.S. 1 (1950), which reversed a conviction for refusing entry to a health officer (JS 10).

Little, however, was a two to one decision in the Circuit Court of Appeals and, when it reached the Supreme Court, was decided on other than constitutional grounds. In spite of the broad language in the majority opinion of the Court of Appeals regarding limitations on the right to make inspections, it should be noted that the statutes involved in the case required the occupant of any premises to keep them "clean and wholesome" and authorized the Health Officer to examine any building "supposed or reported to be in an unsanitary condition." 178 F.2d at 15, n. 3. The indefinite standard thus established is in contrast to the careful definitions of the San Francisco ordinances. See, *e.g.*, Arts. 6, 16.

The dissenting judge in *Little* would have upheld the ordinances. He observed that although the sanctity of the home was a fundamental private right protected by the Constitution, it was not an unqualified right but was subject to some limitations just as were the other personal rights safeguarded by the first Ten Amendments.

> "The right of inspection in the interest of public safety and public health is one of these qualifications." 178 F.2d at 24-25.

Different standards must necessarily apply to inspections for health and safety than apply to searches for evidence relative to a criminal conviction. The safety inspection is not directed against the individual, but is solely for the purpose of correcting a condition which creates a danger for himself and for others. He is treated equally with all others in a similar situation and required only to conform to a uniformly applied safety standard. The inspector can only request entry at reasonable times and has no right to force entry if consent is refused. Both the purpose and the method of such inspection are in sharp contrast to the abrupt invasion involved in a search for criminal evidence. There is a vast difference between police entering without a warrant or probable cause to arrest in order to search a person and his private papers to obtain evidence to be used to take away his liberty, and a housing inspection for limited purposes, following a knock on the door and a polite request, at a reasonable time. The term "search" is inappropriately applied to such inspections.

B. The Circumstances In The Case At Bar Present Stronger Reasons Than Those In Frank For Finding That Inspection Without A Prior Warrant Is Reasonable..

In the dissenting opinion in *Frank,* Mr. Justice Douglas noted,

> "Where considerations of health and safety are involved, the facts that would justify an entrance of 'probable cause' to make an inspection are clearly different from those that would justify such an inference when a criminal investigation

> has been undertaken. Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. . . . This is not to sanction synthetic search warrants but to recognize that the showing of probable cause in a health case may have quite different requirements than the one required in graver situations." 359 U.S. at 383.

Experience has indeed shown the need for such periodic inspections, but obtaining a search warrant prior to asserting the right to conduct this inspection would serve no useful purpose in safeguarding the privacy of the home. Moreover, such a requirement could make it impossible to carry on the programs attempting to safeguard and upgrade the lives of those confined by economics to the blighted or decaying areas of the cities.

1. Authority to inspect is essential to protect those living in cities and to prevent the decay of the city itself.

The policy of the City and County of San Francisco in adopting the Housing Code of which sections 503 and 507 are a part is stated in section 101 of the code. That section may be summarized in the statement that substandard and unsanitary residential buildings and dwelling units which are unfit or unsafe for human occupancy and habitation exist within the City and County of San Francisco, and that conditions and characteristics exist which are detrimental to and jeopardize the health, safety and welfare of the

occupants and the general public. The purpose of the code, expressed in section 103, is

> "to provide minimum requirements for the protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential buildings, erected or to be erected in San Francisco. . . ."

The code was adopted in 1958 as a necessary prerequisite to the city obtaining federal assistance for slum clearance.[7] Enforcement of the Housing Code is the responsibility of different officials depending on whether the area to be inspected is within or without a rehabilitation or conservation area. These areas must consist of at least one block within which planned area inspection is necessary to promote the public safety, health, and welfare. See §§ 203.3, 203.18, San Francisco Housing Code.

"Planned area inspection" is the inspection of all residential buildings within the designated area for the purpose of determining and eliminating all violations of the code, and includes a study to determine whether conditions in the area involve aspects of urban renewal. § 203.16. Urban renewal includes undertakings and activities for the elimination and the prevention of the development or spread of blighted areas. § 203.21. The overriding policy is to assure compliance with a broad program of urban renewal and the upgrading of residential buildings in the City of San Francisco.

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[7]See Title 1 of the Housing Act of 1956, Pub. L. No. 1020, 84th Cong. 2nd Sess. (Aug. 7, 1956), 70 Stat. 1091 (1956).

Possible health and safety hazards in a city apartment or other dwelling are not the occupant's business alone as they might be in an isolated country home. A fire started through the improper use or installation of heaters or appliances could spread through an entire apartment building or city block, destroying both lives and property. An inspection of the entire premises under reasonable conditions is a minor infringement of the right of privacy but is a major safeguard of the right of all the tenants to be reasonably secure against conditions over which they have no control. This is particularly likely in appellant's case since, if he is in fact living in part of his store, he is cooking in an area of the building designed for commercial use, and not as a kitchen.

The compelling reason why health and safety inspections cannot depend on complaints or a showing of probable cause is seen clearly in the report of a test survey conducted by a grand jury in New York City in 1953. The grand jury was convened to investigate hazardous, unsanitary conditions in housing, and fifteen square blocks of housing in three representative areas of Brooklyn were surveyed. Prior to the survey, 567 housing division violations had been reported by complaint. The inspection survey revealed an actual total of 12,445 violations in the test area, many of them classed as "hazardous". Other New York City inspections indicated this ratio was not out of line. Grand Jury Presentment, "In the Matter of the Investigation of the Enforcement of any and all Laws Concerning Hazardous and Unsanitary Con-

ditions in Dwellings, etc.," Kings County Court, New York, Part 1, pages 6-8 (January 28, 1953), cited in Brief of the Member Municipalities of the National Institute of Municipal Law Officers as Amici Curiae, *Ohio ex rel. Eaton v. Price,* 364 U.S. 263 (1960, at 5. Thus, this survey disclosed twenty-two health and safety violations for every one violation for which there was a complaint. More persuasive evidence of the great need for a sound health and safety preventive program based upon periodic area-by-area inspections could hardly be found.

It is respectfully submitted that the dissenting opinions in both *Frank* and *Eaton* and the majority opinion of the Court of Appeals in the *Little* case have not squarely met the issue involved: How are these thousands of daily inspections, solely for the purpose of protecting the health of the public, to be conducted if the right to inspect is conditioned on a prior search warrant?

As justification for the imposition of a search warrant as a prerequisite for asserting the right to conduct a routine inspection, Mr. Justice Douglas cites the thousands of inspections made annually in Baltimore and the fact that the number of prosecutions for refusing to permit entry have averaged one per year. He then states:

> "Submission by the overwhelming majority of the populace indicates there is no peril to the health program. One rebel a year (cf. Whyte, The Organization Man) is not too great a price to pay for maintaining our guarantee of civil rights in full vigor." 359 U.S. at 384.

While there may be only "one rebel a year" where officials have a right to inspect without a warrant, it cannot be said that such would be the case when there is no right to enter without a warrant. The enforcement of the program to preserve the public health and safety would, under this approach, totally collapse if any substantial number of citizens chose to enjoy this purported right.

2. Requiring a search warrant would serve no useful purpose in safeguarding the privacy of the home.

The dissenting opinions in both *Frank* and *Eaton* indicate that the purpose of obtaining a warrant is to insure that an objective mind will weigh the need to invade privacy to enforce the law. In a case based on a complaint, or on probable cause to believe a violation is taking place, there are at least facts and witnesses which the Court could consider in making a determination.[8]

In the case of the San Francisco ordinance, there has been a legislative determination that there is a need for annual inspections and planned area inspections where administrative agencies make an appropriate determination. There are, however, no additional "facts" relating to any individual situation which the

[8]This was noted by the majority in *Little:*

"The District lays great stress upon the fact that there was a complaint, succinct and definite. . . . [T]he fact of a complaint shows (1) that there is an identifiable informant who could be taken before a magistrate; (2) that the enforcement officers have no direct or personal knowledge of the alleged offense; and (3) that in all reasonable probability a search warrant would be procurable. These are reasons for getting a warrant not for failing to get one." *District of Columbia v. Little,* 178 F.2d 13, 18 (1949).

judge could weigh. It was pointed out by the dissenting judge in *Little:*

> "Moreover, even if an Act providing for such search warrants should be placed upon the statute books, how can an inspector make a showing of probable cause as a basis for the issuance of a warrant for the purpose of an ordinary, routine examination? Regular periodic inspections are conducted for the purpose of making certain that laws relating to sanitation and safety are being observed. . . . If a search warrant were necessary for such recurring inspections, the requirement would amount to turning over the supervision of administration from the executive to the judicial branch of the Government, which, as the Supreme Court has observed in the past, would be a source of mischief and is contrary to the philosophy of our form of Government." 178 F.2d at 24.

What purpose is served, for example, in interposing a magistrate in the circumstance of a planned area inspection? The responsible agencies make an administrative determination, using their expertise in the field of planning and urban design, that an area can be preserved or rehabilitated. Essential to the program is the inspection of every building in the area. When an occupant asserts a "right" to refuse entry, if the official must then get a warrant, what does the magistrate do? If he must accept the administrative decision, he serves no function because there is no weighing of the need to invade privacy. Is this judicial seal of approval then good for the whole area, or must the official return for a new determination

on each refusal? If the judge is not merely a "rubber stamp", is he expert enough to make the final decision as to whether an area is to be rehabilitated, or whether periodic inspections are necessary? This would seem to be a determination more appropriately made by the agency with expertise in the field. If he does make this decision, what happens when the second occupant refuses to consent to entry, a different judge hears the case, and a different determination is made? A rehabilitation program can only succeed when the whole area is treated uniformly.

We contend that a requirement for a warrant in these circumstances would create far more problems than would be solved. The result would be both confusion and an enormous burden on the Courts, with no more protection of the right to privacy than now exists.

The right to enter under the San Francisco ordinance is carefully circumscribed: only authorized employees of city departments or agencies may enter; they may enter only upon presentation of proper credentials and only so far as may be necessary for the performance of the duties imposed upon them by the Municipal Code; they have the right to enter only at reasonable times; and most important, they have no power to force entry. The procedure followed is to try to persuade the party who refuses entry to agree to the inspection; failing that, the inspector's only remedy is the one followed in this case, that is, to seek a warrant of arrest from the District Attorney's Office for a violation of section 507.

The entire program is grounded on the concept that the public welfare is best served through the prevention of conditions resulting in hazards to health and safety. The code is designed primarily to serve this purpose, not to punish the violator. It is replete with provisions providing for notice of substandard conditions, permitting appeal to various officers, and requiring reports from the order of the official in charge. See, *e.g.* §§ 505(b); 1701-08. It is only when all other methods fail that legal action to compel compliance is undertaken.

Therefore it is apparent that a routine annual inspection pursuant to this carefully circumscribed ordinance presents a stronger case than *Frank* for a determination of reasonableness.[9]

This is not to say that any official has at any time, for any reason, the unrestricted right to enter a private home. The remote possibility of abuse by an inspector, however, should not determine whether or

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[9]The possibility of this result is suggested in Mr. Justice Black's comment in *District of Columbia v. Little,* 339 U.S. 1, 3 (1950):

> "At one extreme the district argues that the Fourth Amendment has no application whatever to inspections and investigations made by health officers; that to preserve the public health, officers may without judicial warrants enter premises, public buildings and private residences at any reasonable hour, with or without the owner's consent. At the opposite extreme, it is argued that no sanitary inspections can ever be made by health officers without a search warrant, except with a property owner's consent. Between these two extremes are suggestions that the Fourth Amendment requires search warrants to inspect premises where the object of inspections is to obtain evidence for criminal punishment or where there are conditions imminently dangerous to life and health, but that municipalities and other governing agencies may lawfully provide for general routine inspections at reasonable hours without search warrants."

not an inspection conducted pursuant to his duty, and under reasonable conditions, is permitted by the Fourth and Fourteenth Amendments. Possible abuse of the right to make, without a warrant, a reasonable search incident to an arrest, for instance, has not led to a requirement that all searches for criminal evidence be conducted pursuant to a warrant. *Compare Agnello v. United States,* 269 U.S. 20 (1925), *with United States v. Rabinowitz,* 339 U.S. 56 (1950). There is even less reason for applying such a rule to safety inspections. Here, contrary to the case of a search pursuant to an arrest, there is no abrupt invasion of privacy. To this day, appellant's premises have not been inspected. Over the many years and thousands of inspections, few instances of attempted abuse by health inspectors have arisen. Rather, the efficacy of such programs is shown in the great strides made in the fields of public health and urban renewal.

In conclusion, the attempt by the City of San Francisco to preserve and improve the quality of its housing represents a valid exercise of the city's police power. To impose a requirement of a prior search warrant would make it nearly impossible to carry out the regular inspections vitally necessary for the success of the program. The nature of the obligation of the individual as a member of the public, and the purpose of the ordinance, solely to protect the public health, distinguish this kind of inspection from a search for criminal evidence: the liberty of the individual is not at stake, but the health and safety of the public is. It is surely not too much to ask that

each individual give up a small portion of his absolute privacy in order that all individuals may be secure.

The Constitution today must be a growing and flexible document, reflecting the problems and protections needed in an increasingly complex and interdependent society, and not a document of rigid absolutes unrelated to considerations of the needs of society and the nature of the individual interests concerned.

CONCLUSION

For these reasons, it is respectfully submitted that the judgment of the District Court of Appeal be affirmed, or in the alternative, that the appeal be dismissed.

Dated, San Francisco, California,
June 15, 1966.

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(Appendix A Follows)